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**PERMIT FOR OPERATION OF AQUATIC  
EQUIPMENT RENTAL CONCESSIONS  
30130**

Pursuant to a minute order of the City Council of the City of Long Beach at its May 23, 2006 meeting, the City of Long Beach, a municipal corporation ("City") hereby grants permission to KEN WILLIAMS, an individual, doing business as CALIFORNIA AQUATICS, whose address is 1077 Pacific Coast Hwy #190, Seal Beach, California 90740 ("Permittee") to operate an aquatic equipment rental concessions as follows:

9           1.     PREMISES. Permittee shall at its sole cost and expense  
10 provide, operate and maintain aquatic equipment rental concessions, including but not  
11 limited to boats, kayaks, canoes, aqua cycles, paddle boats. or rafts, at two locations as  
12 follows:

13                     Bay Shore Walk (Ocean Boulevard at 54<sup>th</sup> Place)

14                     Marine Park (San Marco at Appian Way)

15           2.     TERM. The term of this Permit shall commence at 12:01 a.m. on  
16 June 1, 2006, and shall terminate at midnight on May 31, 2011, unless revoked prior to  
17 said termination as provided herein. Upon termination of this Permit (whether by lapse of  
18 time or otherwise), Permittee shall quit and surrender possession of the premises and  
19 remove its personal property therefrom. This Permit may be extended for two (2)  
20 additional periods of five (5) years at the sole discretion of the City Manager or designee.  
21 However, the terms and conditions of this Permit may be subject to modification if  
22 renewed.

23           3.     PAYMENT BY PERMITTEE TO CITY.

24                     A.     Permittee shall on or before the 20<sup>th</sup> day of the calendar month  
25 immediately following the month in which the term of the Permit begins and on or  
26 before the 20<sup>th</sup> day of each succeeding calendar month thereafter during the term  
27 of this Permit or any extension or renewal of this Permit, pay the Department of  
28 Parks, Recreation and Marine ("Department"): fifteen percent (15%) of gross

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Long Beach, California 90802-4664  
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1 receipts for the preceding calendar month, whether received by Permittee, its  
2 subpermittees, concessionaires or other person(s) or entity operating under a  
3 contract with Permittee from all permitted concessions, operations and activities.  
4 Permittee shall not have any right of abatement, deduction, set off, prior notice or  
5 demand.

6 B. In the event that the fifteen percent of gross receipts paid by  
7 Permittee to City does not exceed Eight Thousand Five Hundred Dollars  
8 (\$8,500.00) for the calendar year ("Minimum Payment"), then Permittee shall pay  
9 the difference between Eight Thousand Five Hundred Dollars and the amount paid  
10 to the City on or before January 31 of each calendar year. Said payment shall be  
11 included with the Financial Statement required herein on or before January 31 of  
12 each calendar year, said Minimum Payment shall be prorated for any partial year  
13 at Seven Hundred Eight Dollars (\$708.00) per month. For example, if Permit is in  
14 effect for six (6) months as of the end of December then the Minimum Payment  
15 would be (6 x \$708) Four Thousand Two Hundred Forty Eight Dollars (\$4,248.00).

16 C. Permittee shall, within twenty (20) days following the expiration or  
17 sooner termination or revocation of this Permit, pay to the Department any and all  
18 sums due to the Department. Gross receipts shall mean all monies received by or  
19 due the Permittee as a result of the operations authorized by this Permit without any  
20 deductions whatsoever, except any sales tax payable to state or other governmental  
21 agency.

22 D. If Permittee fails to pay percentage rent or Minimum Payment on the  
23 date they are due and payable, the unpaid amounts will be subject to a late  
24 payment charge of five (5) percent or Fifty Dollars (\$50.00) whichever is greater.  
25 This late payment charge is intended to compensate City for its additional  
26 administrative costs resulting from Permittees failure, and has been agreed upon  
27 by City and Permittee, after negotiation, as a reasonable estimate of the additional  
28 administrative costs that will be incurred by city as a result of Permittee's failure.

1 The actual cost in each instance is extremely difficult, if not impossible, to  
2 determine. This late payment charge will constitute liquidated damages and will be  
3 paid to City together with such unpaid amounts. The payment of this late payment  
4 charge will not constitute a waiver by City of any default by Permittee under this  
5 Permit.

6 E. Permittee shall pay interest at a rate of ten percent (10%) per annum,  
7 on past due amounts from the date on which they are due until the date they are  
8 paid in full with interest.

9 4. FACILITIES FURNISHED BY CITY. The City shall furnish Permittee one  
10 storage room within the concession structure at the Bay Shore Walk site, that being the  
11 storage room now being used by Permittee in the conduct of its aquatic equipment rental  
12 business. Said storage room is furnished "as is" and in its present condition, with no  
13 additional improvements or equipment to be provided by City.

14 5. FACILITIES FURNISHED BY PERMITTEE. The City shall cooperate with  
15 Permittee in the location of a storage container at the Bay Shore Walk site and storage  
16 container at the Marine Park site. Said containers shall be moveable. Said containers  
17 shall be located and maintained at Permittee's expense. Said containers shall be  
18 appropriately maintained and painted, may display the California Aquatics name and  
19 describe the aquatic equipment rental services offered to the public. Said containers shall  
20 only be utilized as part of Permittee's business for the storage of Permittee's aquatic  
21 equipment and associated business items. The placement of any storage container at  
22 either location is subject to the approval of the Director of Parks, Recreation and Marine  
23 ("Director"), the Department of Planning and Building, the California Coastal Commission  
24 and any other regulatory agency having jurisdiction within this area. All items and the plans  
25 and specifications for installation of same shall be subject to the same prior approval.

26 6. SAFETY AND EQUIPMENT. Permittee must provide all safety equipment  
27 determined to be necessary for the safe operation of all boats, kayaks, canoes, aqua  
28 cycles, paddle boats, rafts or other aquatic equipment furnished for the public use by

1 Permittee. Permittee shall meet before April 30 of each year, with the City's Chief  
2 Lifeguard and Manager of Marinas and Beaches or their designees to review emergency  
3 water safety requirements and instructions to be given to the public for operation of  
4 Permittee's aquatic equipment, said Lifeguard being authorized to determine any  
5 necessary safety equipment, and the circumstances attaching to its requirement or use.  
6 The Permittee must initially submit to the City's Chief Lifeguard or his designee and to the  
7 Director, and thereafter before March 1 of each year a list of Permittee's aquatic equipment  
8 held for rental to the public.

9 7. WAIVER FORM. Permittee is required to have customers complete and  
10 sign a waiver form substantially in the same format as shown in Exhibit "A" attached hereto  
11 and incorporated herein by this reference, before renting equipment.

12 8. MAINTENANCE. Permittee shall be responsible at its sole cost and expense  
13 for the upkeep, maintenance, repair and service of the storage room here furnished by the  
14 City to Permittee, the containers being furnished by Permittee and the aquatic equipment  
15 and other items being furnished by Permittee. They shall be maintained in first-class  
16 working order, to the satisfaction of the Director. Aquatic Equipment shall be properly  
17 identified as belonging to Permittee, the type of identification shall be approved by the  
18 Director. Insofar as sanitation and appearance of the concession and the items are  
19 involved, the Director shall have the right to direct Permittee to perform necessary repairs  
20 and maintenance to items furnished by Permittee. If Permittee uses items furnished by the  
21 City, the director shall have the right to prescribe in detail the type and frequency of  
22 maintenance and repair to be performed by Permittee for those items.

23 Because the City is interested in preserving its storage room and providing clean  
24 and sanitary conditions, if Permittee fails to perform the prescribed maintenance on any  
25 item, the Director shall have the right after ten (10) days' notice to do the prescribed work  
26 in an efficient manner and to charge Permittee for the cost thereof. Cost shall be equal to  
27 the sum of the cost of the direct labor and materials necessary to perform the work plus  
28 overhead.

1 The storage room furnished by the City shall not be altered, removed or replaced  
2 without prior approval of the Director and, if approval is given to Permittee, such alteration,  
3 removal or replacement shall be at the sole cost and expense of Permittee.

4 9. IMPROVEMENTS. Permittee shall be entitled to propose to the Director,  
5 the addition of portable chairs, tables, umbrellas, etc. that may render the Bay Shore Walk  
6 site or the Marine Park site, in the vicinity of Permittee's business activities more enjoyable  
7 and convenient to the public. To the extent necessary, Permittee shall obtain any requisite  
8 approvals and/or permits including but not limited to; the City's Planning and Building  
9 Department and the California Coastal Commission. All costs associated with the  
10 proposals shall be the responsibility of Permittee, and/or the food and beverage and  
11 beach equipment rental Permittee within the Bay Shore Walk and/or Marine Park sites.

12 10. UTILITIES. Permittee shall pay all costs associated with installation of  
13 utilities and telephone service and shall pay all gas, water, electrical energy and telephone  
14 service charges, if any.

15 11. FINANCIAL STATEMENT. Permittee shall, on or before the 20<sup>th</sup> day of  
16 the month next following the month during which Permittee commences operation, and on  
17 or before the 20<sup>th</sup> day of each month hereafter throughout the term of this Permit or any  
18 extension hereof, give the Director a financial report showing Permittee's daily income from  
19 the concession for the preceding calendar month. On or before the 1<sup>st</sup> day of October of  
20 each year throughout the term of the Permit or any extension hereof, Permittee shall give  
21 the Director a financial recap statement showing the total income for the season, together  
22 with a report of the expenses and disposition of profits, if any, in connection with the  
23 concession.

24 Permittee shall on or before January 31<sup>st</sup> of each calendar year deliver to the  
25 Director at 2760 Studebaker Road, Long Beach, California 90815-1697, a signed  
26 statement showing gross receipts of the preceding calendar year or partial calendar year.  
27 Such statement shall be prepared and delivered to City in accordance with generally  
28 accepted accounting practices containing a statement of gross receipts and a computation

1 of percentage of gross receipts.

2 If Permittee fails to prepare and deliver or cause to be prepared and delivered the  
3 statement as and when required above and such failure continues after thirty (30) days'  
4 notice thereof by City to Permittee, City may audit or cause an audit to be made of all  
5 books, records and accounts of business operations conducted in, on or from the Premises  
6 and may prepare the statement or statements which Permittee failed to prepare and  
7 deliver. Said audit shall be in addition to any other audit authorized by this agreement.  
8 Permittee shall pay on demand all expenses of such audit and the preparation of any such  
9 statements and all sums as may be shown by such audit to be due as payment together  
10 with interest thereon at the rate of ten percent (10%) per annum from the date of City's  
11 demand.

12 Permittee shall keep or cause to be kept during the term, any extended term and  
13 for three (3) years after the expiration or termination of this Permit full, complete and  
14 accurate books of accounts and other records reflecting all business transactions  
15 conducted in, on or from the Premises. Such books and records shall include a daily  
16 record of gross receipts. Permittee shall maintain a method of accounting for the receipts  
17 and disbursements in connection with all business transactions conducted in, on or from  
18 the Premises which correctly reflects all gross receipts and disbursements. Permittee's  
19 books of account and records shall include but not be limited to general ledgers, cash  
20 receipts, sales and purchases journals including any supporting and underlying documents  
21 such as vouchers, checks, tickets, and bank statements, state sales tax returns, checks  
22 and other documents proving payment of the sums shown, and such other accounting  
23 records as City, in its sole discretion, deems necessary. Permittee's records and books  
24 of account shall reflect only those transactions conducted in, on or from the Premises and  
25 shall not be maintained on a consolidated bases with other activities of Permittee or with  
26 any other entity including without limitation any parent corporation or other wholly-owned  
27 subsidiary or affiliate of Permittee. Said records and books of account shall be kept and  
28 maintained in accordance with generally accepted accounting practices. City shall have

1 access to said records and books of account at all reasonable times for the purpose of  
2 examining and auditing them.

3 The receipt by City of any financial information or the acceptance of payment shall  
4 not bind City to the correctness of the information or amount of payment.

5 City shall have the right once during each permit year and once within a period of  
6 nine (9) months following the expiration or termination of this Permit to undertake a special  
7 audit of Permittee's records and books of account. Permittee shall cooperate fully with City  
8 or City's agents in the special audit. The audit shall be conducted during usual business  
9 hours. If there is a deficiency in payments due to City, the deficiency shall become  
10 immediately due and payable together with interest thereon at the rate of ten percent  
11 (10%) per annum from the date of City's demand for payment of the deficiency. If the  
12 amount of any deficiency for any permit year or partial permit year exceeds three percent  
13 (3%) of the payment, Permittee shall pay the cost of this audit; otherwise the cost thereof  
14 shall be paid by City.

15 12. INDEMNIFICATION:

16 12.1. General Indemnity. Permittee shall defend, indemnify and hold  
17 harmless the City of Long Beach, their officials, employees and agents from and  
18 against any and all liability, claims, demands, damage, loss, causes of action,  
19 proceedings, penalties, costs, and expenses (including but not limited to attorney's  
20 fees, court costs, and expert and witness fees) (Collectively "Claims" or individually  
21 "Claim"). Claims include allegations and include by way of example but are not  
22 limited to: Claims for property damage, personal injury or death arising in whole or  
23 in part from any negligent act or omission of Permittee, its officers, employees,  
24 agents, contractors, customers, or anyone under Permittee's control (collectively  
25 "Indemnitor"); Permittee's breach of this Permit; misrepresentation; willful  
26 misconduct; and Claims by any employee of Indemnitor relating in any way to  
27 workers' compensation. Independent of the duty to indemnify and as a free-  
28 standing duty on the part of Permittee, Permittee shall defend the City and shall

1 continue such defense until the Claim (including allegations in a Claim) is resolved,  
2 whether by settlement, judgment or otherwise. No finding or judgment of  
3 negligence, fault, breach, or the like on the part of Indemnitor shall be required for  
4 the duty to defend to arise. Permittee shall notify the City of any Claim within ten  
5 (10) calendar days. Likewise, City shall notify Permittee of any Claim shall tender  
6 the defense of such claim to Permittee and shall assist Permittee, as may be  
7 reasonably requested, in such defense.

8 This indemnity shall not include claims based upon or arising out of the sole  
9 negligence, gross negligence, or willful misconduct of the City, its officers and  
10 employees. Further, this indemnity shall not require payment of a claim by the City  
11 or its officers or employees as a condition precedent to the recovery under the  
12 same.

13 This indemnification provision supplements and in no way limits the scope  
14 of the indemnifications set out in subparagraph 12.2 below. The indemnity  
15 obligation of Permittee under this paragraph shall survive the expiration or  
16 termination, for any reason, of this Permit.

17 **12.2. Environmental Release and Indemnification.**

18 Permittee hereby agrees to hold harmless, defend and indemnify the City and its  
19 employees, members and officials from and against all liability, loss, damage, costs,  
20 penalties, fines and/or expenses (including attorneys' fees and court costs) arising  
21 out of or in any way connected with or the activities, acts or omissions of Permittee,  
22 its permittees, employees, contractors or agents on or affecting the Premises  
23 without regard to fault or negligence including but not limited to the release of any  
24 hazardous materials into the air, soil, groundwater or surface water on, in, under or  
25 from the Permit Area whether such condition, liability, loss, damage, cost, penalty,  
26 fine and/or expense shall accrue or be discovered before or after termination of this  
27 Permit. This indemnification supplements and in no way limits the scope of the  
28 indemnification set forth in paragraph 12.1. above.



1           In addition, Permittee waives, releases, acquits and forever discharges City,  
2 its employees, members and officials or any other person acting on behalf of City,  
3 of and from any and all claims, actions, causes of action, demands, rights,  
4 damages, costs, expenses, or compensation (collectively "claims") whatsoever  
5 (including, but not limited to, all claims at common law and/or under any federal,  
6 state or local environmental, health and/or safety-related law, rule, regulation or  
7 order, currently existing and as amended or enacted in the future ("Environmental  
8 Law"), whether direct or indirect, known or unknown, foreseen or unforeseen, which  
9 Permittee now has or may have or which may arise in the future on account of or  
10 in any way growing out of or in connection with any hazardous materials on, under  
11 from, or affecting the Permit Area, or any law or regulation applicable thereto.  
12 Permittee acknowledges that it is familiar with Section 1542 of the California Civil  
13 Code which reads: "A general release does not extend to claims which the creditor  
14 does not know or suspect to exist in his favor at the time of executing the release,  
15 which if known by him must have materially affected his settlement with the debtor.";  
16 and hereby releases the Permittee from any unknown claims and waives all rights  
17 it may have under Section 1542 of the Civil Code or under any other statute or  
18 common law principle of similar effect.

19           12.2.1. Exclusions.

- 20           A. Contamination on, beneath, or abutting the Premises  
21 which existed prior to the initial commencement date of the Permit.  
22           B. Contamination which has emanated or emanates from a  
23 location off site the Premises and which has trespassed onto,  
24 underneath or across the Premises.  
25           C. Contamination which is unrelated to Permittee's use,  
26 occupancy of Permittee's subpermittees, invitees, or guests, on the  
27 Premises.  
28           D. Permittee need not indemnify City for activities carried on or

1 around the Premises by City, part of occasional use of the Premises  
2 by City or its other permittees, licensees, or the like or actions of the  
3 public who have not been permitted or solicited by Permittee.

4 12.3. Definition. "Hazardous material" means any substance:

5 A. the presence of which requires investigation or remediation under  
6 any federal, state or local statute,  
7 regulation, ordinance, order, action, policy or common law; or

8 B. which is or becomes defined as a "hazardous waste," "hazardous  
9 substance," pollutant or contaminant under any federal, state or local statute,  
10 regulation, rule or ordinance or amendments thereto including, without  
11 limitation, the Comprehensive Environmental Response, Compensation and  
12 Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource  
13 Conservation and Recovery Act (42 U.S. C. Section 6901 et seq.); or

14 C. which is toxic, explosive, corrosive, flammable, infectious,  
15 radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or  
16 becomes regulated by governmental authority, agency, department,  
17 commission, board, agency or instrumentality of the United States, the State  
18 of California or any political subdivision thereof; or

19 D. the presence of which on the Premises causes or threatens to  
20 cause a nuisance upon the Premises or to adjacent properties or poses or  
21 threatens to pose a hazard to the health or safety of persons on or about the  
22 Premises; or

23 E. the presence of which on adjacent properties could constitute a  
24 trespass by Permittee; or polychlorinated bipheynols (PCBs), asbestos or  
25 urea formaldehyde foam insulation.

26 13. INSURANCE. Concurrent with the execution of this Permit and in partial  
27 performance of Permittee's obligations hereunder, Permittee shall procure and maintain  
28 at Permittee's expense for the duration of this Permit, including any extensions, renewals,

1 or holding over thereof, the following insurance coverages from insurance companies that  
2 are admitted to write insurance in the State of California or from authorized nonadmitted  
3 insurers that have ratings of or equivalent to an A:VIII by A.M. Best and Company:

4           A. Commercial General Liability insurance (equivalent in coverage scope  
5 to ISO form CG 00 01 11 85 or GC 00 01 11 88) in an amount not less than One  
6 Million Dollars (\$1,000,000) combined single limit per occurrence and covering the  
7 Permittee's operations under or in connection with this Permit. If the policy contains  
8 a general aggregate, the general aggregate shall be in an amount not less than Two  
9 Million Dollars (\$2,000,000). Such insurance shall include, as may be applicable  
10 to Permittee's operations under or in connection with this Permit, broad form  
11 contractual liability, products and completed operations liability and liquor liability.  
12 The City of Long Beach, its officials, employees and agents shall be added as  
13 additional insureds by endorsement (equivalent in coverage scope to ISO form CG  
14 20 26 11 85). This insurance shall contain no special limitations on the scope of  
15 protection afforded to the City, its officials, employees and agents, and shall provide  
16 cross-liability protection.

17           B. Protection and Indemnity including, as may be applicable to Permittee's  
18 operations under or in connection with this Permit, injury to customers, damage to  
19 boats, piers, docks and pilings and property on piers and docks, and collision  
20 liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence.  
21 If the policy contains a general aggregate, the general aggregate shall be in an  
22 amount not less than Two Million Dollars (\$2,000,000). The City of Long Beach, its  
23 officials, employees and agents shall be added as additional insureds by  
24 endorsement. This insurance shall contain no special limitations on the scope of  
25 protection afforded to the City, its officials, employees, and agents, and shall  
26 provide cross-liability protection.

27           C. Workers' Compensation as required by the State of California Labor  
28 Code and employee's liability insurance in an amount not less than One Million

1           Dollars (\$1,000,000) per accident.

2           Any self-insurance program or self-insured retention must be approved separately  
3 in writing by City and shall protect the City of Long Beach, its officials, employees, and  
4 agents in the same manner and to the same extent as they would have been protected  
5 had the policy or policies not contained retention provisions.

6           Each insurance policy shall be endorsed to state that coverage shall not be  
7 suspended, voided, materially changed, or canceled by either party except after thirty (30)  
8 days prior written notice to City, and shall be primary to City. Any insurance or self-  
9 insurance maintained by City shall be excess to and shall not contribute to insurance or  
10 self-insurance maintained by Permittee. Permittee shall deliver to City certificates of  
11 insurance and the required endorsements for approval as to sufficiency and form prior to  
12 commencement of this Permit. The certificates and endorsements for each insurance  
13 policy shall contain the original signature of a person authorized by that insurer to bind  
14 coverage on its behalf. Permittee shall, at least thirty (30) days prior to expiration of such  
15 policies, furnish City with evidence of renewals. City reserves the right to require complete  
16 certified copies of all said policies at any time.

17           Such insurance as required herein shall not be deemed to limit Permittee's liability  
18 relating to performance under this Permit. The procuring of insurance shall not be  
19 construed as a limitation on liability or as full performance of the indemnification and hold  
20 harmless provisions of this Permit. Permittee understands and agrees that, notwithstanding  
21 any insurance, Permittee's obligation to defend, indemnify, and hold City, its officials,  
22 agents, and employees harmless hereunder is for the full and total amount of any damage,  
23 injuries, loss, expense, costs, or liabilities caused by or in any manner connected with the  
24 operations of Permittee.

25           Not more frequently than every three (3) years, if in the opinion of City the amount  
26 of the foregoing insurance coverages is not adequate, Permittee shall amend the  
27 insurance coverage as required by City's Risk Manager or designee.

28           Any modification or waiver of the insurance requirements herein shall be made only

1 with the written approval of the City's Risk Manager or designee.

2 14. LICENSES, PERMITS AND TAXES. Permittee shall obtain and pay for  
3 all licenses and permits required for operation of the concession, including but not limited  
4 to necessary Coastal Commission approvals and City Business Licenses.

5 15. TRANSFER OR ASSIGNMENT. This Permit only grants Permittee the  
6 privilege to operate the concession. Permittee by this Permit acquires hereunder no right,  
7 title, or interest of any kind in the concession or the property on which the concession is  
8 located. Permittee shall not sublet the concession or the property on which the concession  
9 is located, or any part thereof, or allow the same to be used or occupied by any other  
10 person or for any other purpose than that herein specified, nor assign this Permit or in any  
11 manner convey or transfer any privilege herein granted. This Permit shall not be  
12 transferred by attachment, execution, proceedings in insolvency or bankruptcy, either  
13 voluntary or involuntary, or receivership proceedings (collectively "transfer"). In the event  
14 of such subletting, assignment, or transfer said act or acts shall be null and void and have  
15 no force or effect and the City may revoke this Permit.

16 16. STANDARDS OF SERVICE. Permittee shall conduct business in a manner  
17 acceptable to the City and shall have a sufficient number of employees necessary to  
18 furnish the best service possible. All personnel used in serving the public shall be clean,  
19 neat and orderly in appearance, and shall be uniformed and identified in a manner  
20 acceptable to the Director.

21 The Director shall have the right to approve the level of service rendered and to  
22 order such service improved, discontinued or remedied. If the quality of service or  
23 equipment supplied or the cleanliness of the concession is not at a level satisfactory to the  
24 Director or does not adequately meet the needs of the public, or if Permittee violates any  
25 of the terms or conditions of this Permit, then the Director shall have the right to revoke this  
26 Permit by giving prior notice of revocation to Permittee.

27 17. ATTENTION. Permittee shall devote time and attention to the concession  
28 and shall promote, increase and develop the concession and render every possible service

1 and convenience to the public or shall appoint a manager to do so who shall remain  
2 subject to the direction and control of Permittee. Any manager appointed by Permittee  
3 shall have full authority for the concession or portion under his/her control. Permittee shall  
4 employ individuals skilled in management of businesses similar to the concession and  
5 Permittee shall encourage his manager to utilize sound business methods.

6 18. CONTROL OF PREMISES. If necessary for the health, welfare or safety of  
7 the public, or as a result of the revocation of this Permit, the City shall have the right to  
8 enter the concession and immediately take possession of it and remove, relocate, or use  
9 Permittee's items at Permittee's full cost and expense until arrangements can be made by  
10 the City for other items to replace those of Permittee.

11 19. LAWS AND ORDINANCES. Permittee shall comply with all applicable  
12 municipal, state and federal laws, rules, regulations, and ordinances and the directives or  
13 instructions of the Director relating to the concession. Failure to do so may result in the  
14 immediate revocation of this Permit. Permittee shall obtain and display, as required, all  
15 other permits or licenses, including but not limited to those from the City's Department of  
16 Health and Human Services, and business licenses.

17 20. CONDUCT.

18 A. Permittee shall at all times conduct the concession in a quiet and orderly  
19 manner to the satisfaction of the Director, and in a manner that will not  
20 create a nuisance. Permittee shall permit no intoxicated person, profane or  
21 indecent language, or boisterous or loud conduct in or about the concession,  
22 and shall call upon the aid of peace officers to assist in maintaining peaceful  
23 conditions.

24 NEIGHBORHOOD GOODWILL.

25 B. On an annual basis, Permittee shall meet with the Naples Island and any  
26 other neighborhood association, along the other parts of Alamitos Bay that  
27 are traveled by the aquatic equipment. Permittee shall then meet with  
28 Director or designee to consider changes to operations in order to minimize

1 negative impacts to these neighborhoods.

2 21. BURGLARY, THEFT, FIRE AND VANDALISM. Permittee may, at the  
3 discretion of the Director, be held responsible for any damage or loss which may occur to  
4 the premises, equipment, merchandise or receipts, because of Permittee's failure to  
5 properly take precautions to secure and protect said premises, equipment, merchandise  
6 and receipts including, but not limited to, that damage or loss resulting from burglary, fire,  
7 theft or vandalism.

8 22. PRICES. All prices charged at the rental concession shall be subject to  
9 the prior written approval of the Director. The Permittee is required to submit to the  
10 Director all prices for equipment rental at the premises before commencement of business  
11 and before March 1 of each year of the term or any extension. The standards used to  
12 approve or disapprove prices shall be the prevailing market price for the same service or  
13 grade of merchandise.

14 23. EXCLUSIVITY. During the term of this Permit, no other operator will be  
15 permitted to rent self-propelled aquatic equipment from Bay Shore Walk or Marine Park.  
16 Should City desire to offer self-propelled aquatic equipment rentals from other locations  
17 within Alamitos Bay, City shall provide Permittee a right of first refusal in providing such  
18 services and equipment.

19 24. INSPECTION. The City, through its employees or independent contractors,  
20 shall have the right to enter the concession at all reasonable times, to inspect and observe  
21 Permittee's operations. During these inspections, the City shall have the right to use  
22 photographic devices and other instruments for recording conditions and events at the  
23 concession.

24 25. SIGNS AND ADVERTISEMENTS. Permittee shall provide, prominently  
25 display, and maintain (including repair), in a location approved in writing by the Director,  
26 signs identifying the name of the concession, the merchandise and services available at  
27 the concession and their respective prices. Any signs, advertisements or promotional  
28 material provided by Permittee shall have the prior approval of the Director. The City shall

1 have the right to require removal or order refurbishment of any sign or advertisement  
2 previously approved. Permittee shall not permit vendors to display wares inside or outside  
3 the concession or on the property where the concession is located without the prior  
4 approval of the Director. Permittee shall also prominently display any signs provided by  
5 the City in a location determined by the Director. The repair, maintenance and  
6 replacement of signs provided by the City shall be the City's responsibility.

7       26. CLEANLINESS. The food and beverage and beach equipment rental  
8 concessionaire at the Bay Shore Walk site shall be primarily responsible for keeping the  
9 area within fifty (50) feet around his concession or concessions free from refuse and in a  
10 neat, clean, safe, and sanitary condition and shall be responsible for furnishing adequate  
11 containers fro the purpose of keeping that area free from trash or debris associated with  
12 its business and with paying any trash disposal charges associated therewith. Permittee  
13 shall be responsible for the removal of any trash or debris associated with Permittee's  
14 business and shall be secondarily responsible for removing trash or debris associated with  
15 the business of any such food and beverage and beach equipment rental concessionaire.  
16 Permittee shall not allow any offensive or refuse matter, any substance constituting a fire  
17 hazard, material detrimental to the public health, or any hazardous material at the  
18 Premises or on the property where the Premises is located.

19       27. NONDISCRIMINATION. Subject to applicable laws and regulations,  
20 Permittee and Permittee's employees shall not discriminate on the basis of race, religion,  
21 color, ancestry, sex, sexual orientation, AIDS, HIV status, age, national origin, handicap,  
22 disability or veteran status in the operation of the concession.

23       28. COMPLIANCE WITH AMERICAN WITH DISABILITIES ACT.  
24 Permittee agrees that Compliance with the Americans with Disabilities Act of 1990 ("ADA")  
25 shall be their sole responsibility and shall defend, indemnify and hold harmless City for any  
26 liability arising from failure to comply therewith.

27       29. HEALTH AND SAFETY. Permittee shall correct safety deficiencies and  
28 violations of safety practices immediately and shall cooperate fully with the City in the



1 investigation of accidents occurring at or near the concession. In the event of injury to a  
2 customer, Permittee shall ensure that the injured person receives prompt and qualified  
3 medical attention. If Permittee fails to correct hazardous conditions which have led or, in  
4 the opinion of the Director could lead to injury, the Director may immediately revoke this  
5 Permit.

6 30. USE OF AREA. Permittee, in the conduct of the concession, shall not in any  
7 manner whatsoever interfere with regular use of the park/beach for its intended purpose,  
8 i.e., the enjoyment thereof by the public.

9 31. APPROVAL. Any approval, consent, or permission to be obtained by  
10 Permittee from the City or the Director shall be in writing and Permittee's failure to obtain  
11 same shall not relieve Permittee of Permittee's obligations to faithfully perform the  
12 provisions of this Permit. Permittee shall immediately comply with any written request or  
13 order submitted to Permittee by the Director or the City.

14 32. OTHER PERMITS. Permittee shall only use the storage room within the  
15 concession structure and the property where the concession is located for the purposes  
16 stated in this Permit. The City shall have the right to grant additional permits for different  
17 purposes and additional permits for similar purposes in conjunction with food and beverage  
18 sales, commercial picnic services and other special events, and Permittee shall cooperate  
19 fully with any other permittees in the vicinity.

20 33. DEFAULT. If Permittee fails, neglects or refuses to improve or change the  
21 service rendered concession or to conform to the rules, regulations, directions or  
22 instructions from the City, or the Director, or fails, neglects or refuses to pay any Permit fee  
23 or any part thereof after the same shall become due, or defaults in the performance of any  
24 of the other provision herein, and said failure, neglect, refusal, or default continues for a  
25 period of thirty (30) days after notice thereof to Permittee, then the City may immediately  
26 revoke this Permit and enter and take possession of the concession at Permittee's cost  
27 and expense. Revocation of this Permit shall not impair any other right or remedy of the  
28 City.

1 The occurrence of any of the following shall constitute a default by the Permittee:

2 A. Failure to pay percentage payment when due, if the failure continues  
3 for five (5) days after written notice has been given to the Permittee.

4 B. Failure to perform any of the provisions of this Permit if the failure  
5 to perform is not cured within thirty (30) days after written notice has been given to  
6 Permittee. If the default cannot be reasonably cured within thirty (30) days,  
7 Permittee shall not be in default if Permittee begins to cure within the thirty (30) day  
8 period and diligently and in good faith continues to cure the default.

9 Notices given under this paragraph shall specify the alleged default and the  
10 applicable permit provisions, and shall demand that Permittee perform the  
11 provisions of this Permit or pay the percentage payment that is in arrears, as the  
12 case may be, within the applicable period of time, or quit the premises. No such  
13 notice shall be deemed a forfeiture or a termination of this Permit unless City so  
14 elects in the notice.

15 34. NO WAIVER. The acceptance of all or part of any Permit fee by the City  
16 after the failure, neglect, refusal, or default of Permittee shall not be deemed a waiver of  
17 any provision of this Permit or any right to indemnity or to any right to revoke this Permit.  
18 Any waiver by the City of the failure, neglect, refusal, or default of Permittee shall be in  
19 writing and shall not constitute a waiver of any other or subsequent failure, neglect, refusal,  
20 or default of the same or any other or subsequent failure, neglect, refusal, or default.

21 35. RESTORATION OF CONCESSION. Upon the expiration or sooner  
22 revocation of this Permit, Permittee shall have the right to remove items described in  
23 Section 5 hereof from the concession and shall have thirty (30) days from notice from the  
24 Director to make such removal and to restore the concession to the condition existing at  
25 the time Permittee's use thereof commenced, to the satisfaction of the City. If said items  
26 are not removed within that period, they shall become the property of the City or, at the  
27 option of the City, they may be removed and the restoration performed and Permittee  
28 charged for the labor and materials required to perform the work plus any overhead costs.

1           36.    REVOCATION. Notwithstanding anything herein to the contrary and  
2 except for provisions allowing immediate revocation, this Permit may be revoked by the  
3 City for any or no reason whatsoever on ninety (90) days' prior notice of such revocation  
4 to Permittee.

5           37.    SPECIAL EVENTS. Permittee must receive written authorization from  
6 the Director or designee. Approval of the request is subject to compliance with the  
7 provision of the Long Beach Municipal Code.

8           38.    HOLDING OVER. In the event Permittee shall continue in possession of  
9 the premises after the expiration of the permit term, such possession shall not be  
10 considered a renewal of this Permit but a tenancy from month to month and shall be  
11 governed by the conditions and covenants contained in this Permit.

12           39.    PARTIAL TAKING. If a portion of the premises or other improvements  
13 shall be taken for any public or quasi-public use, and the remaining portion of the premises  
14 and improvements can be restored by Permittee to an economically operable facility of  
15 comparable kind and quality to the facility existing prior to the taking, then this Permit shall  
16 not be affected and Permittee shall retain the remaining portion or portions of the premises.

17           40.    CALIFORNIA LAW. This Permit shall be construed and interpreted in  
18 accordance with the laws of the State of California.

19           41.    NOTICES. All notices shall be in writing or personally served pr deposited  
20 in the U.S. Postal Service, first class, postage prepaid, to Permittee at 1077 Pacific Coast  
21 Highway #190, Seal Beach, California 90740, and to the City at 2760 Studebaker Road,  
22 Long Beach, California 90815-1697, Attn: Director. Notice of change of address shall be  
23 given in the same manner as stated for other notices. Notices shall be deemed given on  
24 the date deposited in the mail or on the date personal service is obtained, whichever first  
25 occurs.

26           42.    TAXES. This Permit may create a Possessory interest subject to property  
27 taxation and Permittee may be liable for the payment of property taxes levied on such  
28 possessory interest. Permittee covenants to pay or cause to be paid, prior to delinquency,

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 all taxes, assessments and other governmental and district charges that may be levied or  
2 assessed upon buildings, improvements, or property located on the Premises, to the extent  
3 of the possessory interests created by this Permit and/or to the extent owed by Permittee.  
4 Satisfactory evidence of such payments shall be delivered to City upon demand therefor.

5 43. LIABILITY. City shall not be liable for and Permittee hereby waives all  
6 claims against the City, its officials, employees and agents for loss or damage to  
7 Permittee's personal property, or to Permittee's business, or for injury to or death of  
8 persons due to theft, fire, flood, burglary, vandalism, or any other cause whatsoever, at the  
9 location designated herein, except to the extent caused by City's gross negligence or willful  
10 misconduct.

11 44. MISCELLANEOUS. This Permit constitutes the entire understanding  
12 between the parties and supersedes all other agreements, oral or written, with respect to  
13 the subject matter herein. Revocation or termination of this Permit shall not affect rights  
14 or liabilities that accrued hereunder prior to such revocation or termination. This Permit  
15 shall not be construed or interpreted against either the City or the Permittee as the drafter.  
16 This Permit is not intended or entered for the purpose of creating any benefit or right for  
17 any person or entity that is not a signatory to this Permit.

18 Permittee consents to and agrees to perform the terms, covenants, and conditions  
19 imposed on Permittee under this Permit.

20  
21  
22 KEN WILLIAMS, an individual, doing business  
as CALIFORNIA AQUATICS

23 10/20, 2006

24 By: 

"PERMITTEE"

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

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CITY OF LONG BEACH, a  
municipal corporation

2/26, 2006

By: [Signature]  
City Manager  
"CITY"

This Permit is hereby approved as to form this 24<sup>th</sup> day of January, 2006.

ROBERT E. SHANNON, City Attorney

By: [Signature]  
Deputy

JCP:abc 06-02718  
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